

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al., CIVIL CASE NO.: 3:17CV00072
OCTOBER 18, 2019
HARRISONBURG, VIRGINIA
Plaintiffs, TELEPHONIC STATUS CONFERENCE
vs.

JASON KESSLER, et al., Before:
HONORABLE JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE
Defendants. WESTERN DISTRICT OF VIRGINIA

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1 (3:04 p.m.)

2 THE COURT: Hi, this is Joel Hoppe. Who is on the
3 line for the plaintiffs?

4 MR. BLOCH: Judge, this is Michael Bloch from Kaplan
5 Hecker & Fink on behalf of the plaintiffs.

6 MR. LEVINE: And Allen Levine from Cooley on behalf
7 of the plaintiffs, Your Honor.

8 MS. PHILLIPS: Your Honor, Jessica Phillips from
9 Boies Schiller Flexner is also on the line for plaintiffs.

10 MS. ASHWELL: Erin Ashwell from Woods Rogers also
11 for plaintiffs.

12 THE COURT: Good afternoon, you-all. And then,
13 let's see, Mr. Kolenich, are you on the phone?

14 MR. KOLENICH: Yes, I'm here.

15 THE COURT: All right. Let's see, and you're here
16 for Mr. Kessler and Damigo, Identity Evropa, Matthew Parrott,
17 and Traditionalist Workers Party, and then there are motions
18 to withdraw for Mr. Cantwell and Mr. Ray?

19 MR. KOLENICH: Yes, sir. Mr. Cantwell has actually
20 affirmatively fired me at this point.

21 THE COURT: I did see that email, all right. But
22 those are the folks you're here on behalf of; is that right?

23 MR. KOLENICH: Yes, sir.

24 THE COURT: Mr. DiNucci, are you here on the phone?

25 MR. DINUCCI: Yes, I am, Your Honor.

1 THE COURT: Good afternoon. Do we have anybody on
2 the line for Mr. Fields?

3 MR. CAMPBELL: Yes, Your Honor, Dave Campbell.

4 THE COURT: Good afternoon. Mr. Jones, are you on
5 the phone?

6 MR. JONES: Yes, Your Honor, I am.

7 THE COURT: All right. And then Mr. ReBrook?

8 MR. REBROOK: Yes, sir.

9 THE COURT: All right. Good afternoon to you.
10 And then let's see, do we have Elliot Kline on the
11 phone?

12 All right. How about Matthew Heimbach?

13 MR. HEIMBACH: Present and accounted for, Your
14 Honor.

15 THE COURT: All right, good afternoon. And is
16 anybody else on the line? I know we have Joyce Jones, is our
17 courtroom deputy who is recording this call, but is anybody
18 else on the line?

19 THE REPORTER: Your Honor, this is Mary Butenschoen,
20 the stenographer court reporter taking the phone call.

21 MS. ASHWELL: Your Honor, this is Erin Ashwell. We
22 have an intern who has been helping on the case, and I was
23 letting him sit in.

24 THE COURT: Okay, that's fine. Any other parties on
25 the phone? All right.

1 Well, we have a number of things that I want to take
2 up today. At the conclusion of addressing all the different
3 motions and things, I do want to hear from you-all about the
4 discovery schedule and setting up some deadlines and -- so
5 this case can have another schedule and it can move forward to
6 its conclusion.

7 But the first thing I wanted to take up are the
8 motions from Mr. Kolenich to withdraw as counsel for Mr. Ray
9 and Mr. Cantwell. And Mr. Kolenich, I understand that
10 Mr. Cantwell has terminated your representation and also that
11 of Mr. Woodard; is that correct?

12 MR. KOLENICH: Yes, that's correct.

13 THE COURT: I think that your motion to withdraw was
14 otherwise well taken for him. So I -- but it sounds -- I'll
15 grant it, but it also sounds like it may be mooted. He has
16 terminated your representation anyway.

17 And then for Mr. Ray, it sounds like he just
18 hasn't -- has stopped communicating with you?

19 MR. KOLENICH: That's correct, Your Honor.

20 THE COURT: And that's been over some lengthy
21 period?

22 MR. KOLENICH: Several months at this point.

23 THE COURT: Well, I also think that that's grounds
24 for withdrawing, too. If there has just been a complete
25 breakdown of communication between an attorney and his client,

1 that's really a principal reason for withdrawing.

2 Would anyone on the plaintiff's behalf have anything
3 to say as to those motions?

4 MR. BLOCH: Judge, this is Mike Bloch. We don't
5 oppose the motions. The only thing I would ask is that we
6 make sure we have working recent contact information for
7 either or both the defendants that Mr. Kolenich still has.
8 And also, it may be helpful for the Court to notify
9 Mr. Cantwell and Mr. Ray of their obligations to the Court
10 even if they are unrepresented.

11 THE COURT: Well, I will. And they are going to be
12 included in subsequent orders that the Court issues, and, of
13 course, those orders will be forwarded to them. And
14 Mr. Kolenich, I would ask you to pass on contact information
15 for Mr. Ray and Mr. Cantwell to plaintiff's counsel and also
16 to the clerk's office. And that's something that does not
17 need to be made public on the docket, but the clerk's office
18 needs to have that information so that it can contact Mr. Ray
19 and Mr. Cantwell.

20 MR. KOLENICH: Will do, Your Honor. I'll do it
21 today.

22 THE COURT: And I'm also going to grant the motion
23 to extend the time for Mr. Ray and Mr. Cantwell to answer the
24 amended complaint. I'll give them 14 days from the date that
25 the order is entered.

1 All right. The plaintiffs have filed, a number of
2 months ago, there's a motion to enjoin Mr. Cantwell from
3 making certain comments, and that motion has been briefed,
4 supplemented, plaintiffs filed today, and that is something
5 I'm going to take up in a written opinion and order. And
6 counsel, I will try and get that out shortly.

7 MR. BLOCH: Thank you very much, Judge.

8 THE REPORTER: Who was that, please?

9 THE COURT: I think that was Mr. Bloch; is that
10 right?

11 MR. BLOCH: That is Mr. Bloch. I don't know if
12 anybody else was trying to chime in.

13 THE COURT: I think that was the court reporter just
14 asking, and I should remind everybody to identify himself or
15 herself when you speak.

16 THE REPORTER: Thank you.

17 THE COURT: What I'd like to do now is just go ahead
18 and take up -- get some idea about each of the status of
19 discovery production from each of the defendants.

20 There is a motion to compel that the plaintiffs have
21 filed regarding NSM.

22 There is also a motion for sanctions regarding
23 Mr. Kline, who is not on the phone.

24 And then Mr. Bloch sent an email to the Court
25 yesterday and cc'd all the parties on it. And that email

1 outlines where discovery is at this point, where the responses
2 are from the different defendants.

3 And so I want to hear from each of the parties and
4 just go through -- go through the information that Mr. Bloch
5 has outlined and just make sure that everyone is on the same
6 page as to what is outstanding, and then I am going to set
7 some deadlines for -- for those responses.

8 But I want to go ahead and take up the motion to
9 compel NSM. And Mr. Bloch, is there anything else -- and let
10 me say I'm going to issue written orders on the motion to
11 compel NSM and the motion for sanctions for Mr. Kline. But
12 Mr. Bloch, is there anything else that the plaintiffs would
13 want to say as to the motion to compel?

14 MR. BLOCH: Thank you, Judge. This is Mike Bloch.

15 With respect to the NSM motion, it's my
16 understanding, although, obviously, I'll let Mr. ReBrook speak
17 for himself, that he is in fact consenting to our deposing
18 Mr. Colucci exclusively on the issue of documents and
19 discovery, notwithstanding the motion that -- the response
20 that he filed this morning. And I just wanted to clarify
21 that.

22 THE COURT: Mr. ReBrook?

23 MR. REBROOK: Judge, yes. This is Edward ReBrook.
24 Mr. Bloch is correct. I have no problem with any sort of
25 court order ordering Mr. Burt Colucci to do depositions on any

1 subject, really.

2 THE COURT: All right. I think there are some other
3 issues that you raised in the motion as well, Mr. Bloch.

4 MR. BLOCH: Right. Judge, we did -- we also did
5 request attorney's fees. I think at this time -- I spoke with
6 Mr. ReBrook this morning. I do understand he is consenting
7 and willing to make Mr. Colucci available for a deposition,
8 which we appreciate. I think in light of that and the fact
9 that our interest in this case is primarily to get the
10 information and move this case along to trial, I think we can
11 withdraw our request for attorney's fees on that motion.

12 THE COURT: Okay. And do you think at this time
13 that having Mr. Colucci sit for a deposition, that that will
14 address the other concerns that you raised in the motion and,
15 essentially, trying to get more information about NSM accounts
16 and devices? Are you seeking additional relief on that or do
17 you think that the deposition is where you -- is sufficient at
18 this point?

19 MR. BLOCH: Judge, I think the deposition will be a
20 good starting point to figure out what is out there. I do
21 have some concerns that we have no documents at all from NSM.
22 And I understand that Mr. Schoep used to be in charge of NSM
23 and has made some documents available to the vendor, albeit
24 not to us.

25 So as it currently stands two years into the case,

1 we do not have a page of documents from any member of NSM,
2 which I think is a big concern.

3 I think some of the comments that were made in the
4 filing that was filed this morning on behalf of NSM made
5 reference to there likely not being anymore documents and
6 emails out there given -- given how long it's been since the
7 incident. Obviously, it's our position that that -- those
8 documents should have been preserved, that custodian should
9 have been found, and should have produced documents.

10 So I guess I would say -- I think being able to take
11 Mr. Colucci's deposition will hopefully be illuminating for us
12 in terms of what other custodians may be out there, but I
13 can't say I have high hopes that it will necessarily result in
14 a tremendous amount of documents at this point. So I think
15 it's conceivable there may be additional litigation over that.
16 But I do think it's a helpful start.

17 THE COURT: And Mr. Bloch, do you still have
18 concerns about Mr. ReBrook, essentially, focusing on
19 Mr. Schoep in his representation of NSM and not having a
20 broader view of who his client is or is that something that
21 you think that you-all have reached an understanding on?

22 MR. BLOCH: I -- I don't think we've reached an
23 understanding on that. I'm not -- other than Mr. Colucci,
24 I -- who I understand is not particularly cooperative with
25 Mr. ReBrook, it's not my impression that there has been anyone

1 within that organization, anyone else has been contacted.

2 So I -- I guess I do still have concerns about
3 whether we will get sufficient cooperation from NSM to be able
4 to get documents from them and have their participation going
5 forward.

6 THE COURT: All right. And I know you identified
7 Brian Culpepper as somebody who may have exercised control
8 over NSM. Is that someone that you're -- that you're
9 interested in trying to depose or get further information
10 from?

11 MR. BLOCH: Yes, absolutely.

12 THE COURT: All right. Mr. ReBrook, are there
13 other -- well, let me say this: I think that -- I think your
14 view of who the client is for NSM is overly narrow in just
15 focusing on Mr. Schoep. I think NSM, to the extent that it is
16 an organization, the folks who are acting on behalf of NSM,
17 and that doesn't mean every member, but folks who have some
18 sort of authority over NSM and who had some control over it,
19 those are your clients as well when you're representing NSM.
20 So I do think that you have a responsibility to conduct a
21 reasonable investigation to determine who those folks are,
22 determine what -- what discovery they may have and -- and to
23 provide that information to the plaintiffs.

24 MR. REBROOK: Your Honor, if I may, this is Edward
25 ReBrook.

1 THE COURT: Please.

2 MR. ReBROOK: I contacted the vendor, Mr. Ken Kim,
3 back in August to make sure that we were in complete
4 compliance. And he wrote back to me just yesterday saying
5 that he had apparently missed the email from me.

6 But my client uploaded all of the nonprivileged
7 documents that were imaged from his phone, his computer,
8 whatever else he submitted, on September 18. But we didn't
9 learn until just yesterday that these documents would be
10 automatically sent to the plaintiffs once they have been
11 marked as reviewed. All documents have since been marked as
12 reviewed, and it's hundreds if not thousands of documents that
13 have been turned over.

14 THE COURT: Mr. ReBrook, are these the documents
15 from Mr. Schoep that you talked about?

16 MR. REBROOK: Yes.

17 THE COURT: In an email you identified there was a
18 laptop computer and Twitter and websites and so forth?

19 MR. ReBROOK: That's correct, Your Honor.

20 I mean, If we need to put them in a zip drive, I
21 will do that. I'm just not sure what else needs to happen.
22 We've talked to Mr. Kim and followed the procedure, and if
23 they are, indeed, automatically sent to the plaintiffs, that
24 should have happened.

25 THE COURT: All right. Mr. Bloch, what is your take

1 on this?

2 MR. BLOCH: Judge, my understanding is that that's
3 with reference to Mr. Schoep's documents exclusively, and it's
4 again my impression that Mr. Schoep actually was careful to
5 only produce documents on behalf of himself and not documents
6 on behalf of NSM, which I think --

7 I -- and I accept fully Mr. ReBrook's representation
8 that those -- that there was a delay on the vendor's end, but
9 I still think that leaves us with nothing with respect to NSM.
10 And -- and I think -- you know, I think it's clear that
11 Mr. ReBrook has an obligation to do a reasonable investigation
12 of NSM to see who within NSM has -- is a custodian of
13 responsive documents, and I don't think that has happened, and
14 I don't think that would be cured by any documents we received
15 from Mr. Schoep's production.

16 MR. REBROOK: If I may, Your Honor, this is Edward
17 ReBrook again. I have spent months attempting to reach out to
18 these people, whichever names I was able to find.

19 THE COURT: Who were they?

20 MR. REBROOK: I have been unable to reach Mr. Burt
21 Colucci, who is currently the head of the NSM Corporation.
22 The NSM that was an entity during the Charlottesville rally
23 was dissolved earlier this year, and Mr. Colucci is now in
24 charge of the NSM Corporation that's now registered in
25 Florida.

1 I completely consent to him being subpoenaed, being
2 deposed, but he has flat out said to me that he will not -- he
3 will not provide anything at all without a court order. I
4 don't know another way to pressure him to do it. I mean, he's
5 the only --

6 THE COURT: Have you passed on -- hold on.

7 Have you passed on any of the orders that I've
8 entered in this case directing the parties to comply with
9 their discovery obligations? I mean, there have been multiple
10 orders.

11 MR. REBROOK: Yes, but the position that he has
12 given to me is that because he's not a named plaintiff -- or
13 he's not a named defendant and his organization is different
14 than the NSM who was around during the Charlottesville
15 incident that he would require a subpoena to him personally in
16 order to comply.

17 And I've just -- originally I was given the
18 impression that he would be cooperative with me, but
19 apparently he's not being cooperative. So I -- I just don't
20 know how else to make the guy do what I want him to do. It's
21 been very difficult getting him to answer the phone or emails
22 other than to tell me I am not going to give you any
23 information without a court order.

24 THE COURT: But he's agreeing that he's going to sit
25 for a deposition?

1 MR. REBROOK: If he is given -- if he is ordered to
2 do so and he is subpoenaed, yes, Your Honor.

3 THE COURT: All right. Well, there will be a court
4 order directing that. That will come from this hearing.

5 MR. BLOCH: Judge, I'm sorry to interrupt. This is
6 Mike Bloch.

7 I want to clarify one point, which is that,
8 obviously, we sued NSM in October of 2017. And somebody at
9 that point had an obligation to reach out to them, direct them
10 to preserve documents, conduct a reasonable investigation. It
11 probably would have started with Mr. Schoep who was in charge
12 at the time. Mr. Schoep remained, as I understand it, in
13 charge of the organization until March of 2019.

14 So there was about a year and a half during which
15 time some -- there was an obligation on behalf of that
16 defendant to preserve documents, figure out who had documents,
17 and produce documents. It appears that that didn't happen,
18 which I think with respect to that particular defendant it's
19 a, frankly, colossal oversight, and it leaves us in a position
20 two years later where maybe we'll turn up some documents.
21 But, frankly, probably we won't, which is why I say that I
22 think starting with Mr. Colucci is a good start. But I still
23 think -- notwithstanding the fact that this is late, I think
24 it would be likely ineffective.

25 I still think that some attorney, frankly, needs to

1 conduct a reasonable investigation to figure out who within
2 the organization has documents. And the fact that we're two
3 years into the case and that appears to have never happened is
4 deeply troubling.

5 THE COURT: Hold on a second, Mr. ReBrook. Hold on
6 a second. Have those people been identified in discovery
7 requests or initial disclosures, people who may have documents
8 on behalf of NSM? It seems like that should have been done
9 some time ago.

10 MR. REBROOK: I'm sorry, are you asking me, Your
11 Honor? Edward ReBrook?

12 THE COURT: Either one of you.

13 MR. REBROOK: I have attempted to contact everyone
14 that I could find. Obviously, my main point of contact, the
15 only person who has been consistently cooperating with me
16 answering the phone, answering emails, has been Mr. Schoep.

17 I have had a number of communications with Mr. Burt
18 Colucci, but there haven't been very many. He doesn't answer
19 the phone or answer emails with nearly the regularity that
20 Mr. Schoep does. But I have told him what is expected of him,
21 and his reply was, specifically, that he would not provide
22 anything or sit for a deposition unless he was ordered to do
23 so. But he is aware that he is not to be destroying documents
24 or anything of that kind.

25 MR. BLOCH: Judge, if I may. This is Mike Bloch.

1 There's no reason that Mr. Schoep can't still be a
2 source of information for who within the NSM has responsive
3 documents. He was in charge of the organization for, as I
4 understand it, 20-some years and left it in March.

5 So it seems -- his leaving the organization I think
6 doesn't -- certainly doesn't eliminate the information he's
7 got about it, and it doesn't, I think, absolve NSM with the
8 responsibility of figuring out who has documents. And
9 frankly, Mr. Schoep probably knows pretty well.

10 THE COURT: I agree with that, and that should have
11 happened sometime last year that that information should have
12 been provided.

13 So Mr. ReBrook, if Mr. Schoep hasn't identified who
14 at NSM would have discoverable information I'm going to order
15 him to do that. Individually as a party, but also in whatever
16 capacity he served with NSM. I think that's his obligation,
17 and so that will be part of the order as well.

18 MR. REBROOK: Understood, Your Honor. May I ask a
19 question?

20 THE COURT: Sure.

21 MR. REBROOK: I know that some of the individuals
22 that are actually named defendants in this lawsuit were at one
23 point or another members of the NSM. So like Mr. Heimbach,
24 for instance. Am I now representing him as well?

25 THE COURT: Well, you need -- you need to do your

1 own research on that. What I said earlier is that it's not
2 every member of the NSM, but it's really the control group,
3 the people that had authority to act on behalf of NSM.

4 But something that Mr. Bloch identified in their
5 filing is that there's a list of national officers and
6 departments. That should be something that at least I would
7 think would be a start. There are a number of people named in
8 there. Mr. Colucci is one of them.

9 MR. REBROOK: Mr. Colucci actually has provided -- I
10 believe it was filed yesterday. He's provided a list of names
11 of persons that are the officers within NSM. That's been
12 uploaded into the Epic -- the vendor's system. And I will --
13 I will continue to reach out to these people.

14 THE COURT: All right. And Mr. ReBrook, in your
15 filing from I think earlier today you included certification
16 that has maybe 20 or so Gmail accounts that are various
17 derivations of NSM.

18 Is that something, a disclosure, that you made today
19 to the vendor?

20 MR. REBROOK: I'm sorry, Your Honor. I didn't
21 understand the question.

22 THE COURT: It's filed at 575-1. It's the
23 certification of various social media accounts. They look
24 like NSM accounts through Gmail.

25 MR. REBROOK: Yes.

1 THE COURT: Is that a certification that you just
2 made today to the vendor?

3 MR. REBROOK: It's difficult for me to answer that,
4 Your Honor, because while I fully intended for that to be
5 submitted to the vendor, I did not actually do that. My -- my
6 paralegal did that. But yes, that's all information I fully
7 intended on sharing with the plaintiffs.

8 THE COURT: And were there also credentials passed
9 along or is it your intention to --

10 MR. REBROOK: I believe that there were. And if
11 there weren't, I'll get them.

12 THE COURT: All right. Mr. Bloch, anything else on
13 the motion to compel for NSM?

14 MR. BLOCH: No, Judge, I think that's covers it.
15 Thank you.

16 THE COURT: All right. The motion for sanctions of
17 Mr. Kline, Mr. Kline is not on the phone today, but I -- but I
18 think that your request for relief has been laid out, and I
19 think the record is pretty clear as to that -- as to that
20 motion. So I think that's something that I can just address
21 in an order.

22 MR. BLOCH: Thank you, Judge. I appreciate that. I
23 do think it is all laid out in the various submissions on the
24 topic.

25 THE COURT: All right. What I'd like to do next is

1 to just -- Mr. Bloch, I think we can use your email from
2 yesterday as a starting point for discussing what discovery is
3 still outstanding. Then we want to make sure that all of the
4 parties are on the same page about what is required, and we're
5 going to set some deadlines for when this discovery needs to
6 be complete.

7 Mr. Hopper is not on the phone, right? And there's
8 nobody for Vanguard America?

9 MR. BLOCH: I think that's right, Judge.

10 THE COURT: All right. And Mr. Bloch, is it still
11 your understanding that there's some account credentials that
12 are missing for Vanguard America?

13 MR. BLOCH: It is still my understanding, Judge. We
14 still have received nothing from them. I will say the one
15 update is that we did take the deposition of Thomas Ryan
16 Rousseau this week. I will note a couple things about that
17 deposition. Number one, he made clear from the beginning that
18 he was not there as a representative of Vanguard America. So
19 I -- I do think to the extent the point of that deposition as
20 well as the deposition of Mr. Hopper, that being to discover
21 where Vanguard America keeps its documents, I think was not
22 satisfied because I don't think Mr. Rousseau did anything to
23 contact anyone else within the organization to figure out who
24 had responsive documents.

25 Secondly, he in various ways made fairly clear that

1 he's unlikely to have -- he personally is unlikely to have
2 many, if any, responsive documents, either. A number of his
3 electronic devices have been destroyed since the litigation
4 began, and he noted that each of his -- immediate counsel were
5 set such that there was an automatic delete function that
6 deleted any content every 12 hours.

7 So I think we have not -- in terms of actually
8 receiving any documents from Vanguard America or discovering
9 where we might find them, I don't think we've made much
10 progress, and I think there's an equally troubling record of
11 spoliation and destruction of documents.

12 THE COURT: It sounds like there's some background
13 noise. Whoever is contributing to that, will you put your
14 phone on mute, please?

15 All right. Mr. Bloch, for Vanguard America, I know
16 there's a question of -- it's an unrepresented entity at this
17 point, and there's some question about who -- who is
18 responsible for Vanguard America.

19 Have you made any headway on that?

20 MR. BLOCH: Well, Judge, I think Mr. Hopper still
21 believes himself to be the representative for this case. He
22 is obviously not an attorney and I think has been candid about
23 his I think lack of technical expertise. So I think
24 Mr. Hopper is still technically in charge, but, frankly, it
25 would be helpful to have a lawyer to deal with Vanguard on

1 this issue.

2 But I feel like the ultimate takeaway is that we did
3 ask for case-related sanctions in our pending motion. I do
4 think it's fair to assume that we are unlikely to receive
5 many, if any, more responsive documents, in that that motion
6 may well be ripe.

7 That said, there are -- I guess there is still a
8 theoretical possibility that Mr. Hopper may be able to work
9 with a vendor to produce some documents, and, conceivably,
10 Mr. Rousseau may also. But I think we're coming to -- close
11 to the end of the line in terms of figuring out whether
12 Vanguard has anything substantive to produce.

13 THE COURT: Okay.

14 MR. HOPPER: This is Dillon Hopper. I wanted to say
15 I'm present. I was taking care of my kid, and he's the reason
16 for the background noise.

17 THE COURT: All right. Well, Mr. Hopper, thank you
18 for being on the phone. Can you tell me a bit more?

19 Mr. Bloch in his email had indicated that there
20 are some -- you identified certain social media accounts to
21 the vendor but that you didn't provide accurate account
22 credentials to the vendor. What's your --

23 MR. HOPPER: Well, for those -- for those social
24 media accounts, a lot of those were mostly controlled or held
25 by Thomas Rousseau, and I didn't have or I don't have the

1 password to those. If I did, I provided the older passwords
2 that I had that probably, you know, more than likely were not
3 valid anymore because they were changed by Mr. Rousseau and
4 his company.

5 So, I mean, I provided what I could. But, I mean,
6 for -- for me to go about trying to find the actual
7 credentials, the valid credentials for some of those accounts,
8 no. It would entail me contacting Mr. Rousseau, and he
9 refuses to contact me so -- or acknowledge, you know, any
10 contact that I've tried to make with him. So that proves
11 unfruitful.

12 THE COURT: All right. Do you have any other
13 credentials that you haven't provided to the vendor for those
14 social media accounts?

15 MR. HOPPER: For the social media accounts, no, I
16 don't believe so. Unless there are some accounts that I might
17 have forgotten or am unaware of.

18 The only thing that I still need to provide to the
19 vendor is just my newest phone. I realized what the problem
20 was with the old cell phone. It is the fact that it was a
21 Samsung Galaxy s7. And just to let you know, when I actually
22 received that back, I tried charging it and plugging it in and
23 it actually exploded. The phone itself exploded. So that was
24 probably the problem with that.

25 THE COURT: All right. But your second phone,

1 you're able to send that in to the vendor?

2 MR. HOPPER: Yes, yeah, I can send that in. It's
3 just I've been preoccupied lately with, you know, my child and
4 my wife and, you know, life and everything, and giving up my
5 phone, you know, would be extremely hectic. I know I need to
6 do it, though, and I know it would only take two days or so.

7 So I can do that here shortly, within the next week.
8 It's just, you know, life has been rather hectic lately.

9 THE COURT: All right. Well, figure out -- I'll put
10 it in an order and give you a week or two to send that in, but
11 you're going to need to block off some time to do that.

12 MR. HOPPER: Yeah, definitely. I will. I've got
13 most of my business taken care of, and I've got about a week
14 or two to kill right now, so I'll definitely send that in and
15 see what they can do.

16 THE COURT: All right. Mr. Bloch, were you able to
17 get some different account credentials from Mr. Rousseau
18 during the deposition?

19 MR. BLOCH: Judge, we were able to identify some
20 accounts that he believes he might have access to. It will
21 require follow-up to see whether or not he's got the
22 credentials and whether he's able to provide them, but -- so
23 we have an idea as to additional accounts, but I don't know
24 that we've got any access to any of them.

25 I will say, for what it's worth, there was some

1 finger pointing going back in the other direction as well, and
2 so there's some confusion as to who, between Mr. Hopper and
3 Mr. Rousseau, ultimately have the credentials to various
4 accounts.

5 THE COURT: All right. Mr. Bloch, will you make
6 sure that the clerk's office has Mr. Rousseau's contact
7 information? Because I think I will include him in the order
8 as it relates to Vanguard America just to make sure that all
9 available credentials for the relevant social media accounts
10 are provided.

11 MR. BLOCH: I will, Judge, and I'd also just note
12 for the record Mr. Rousseau retained an attorney for purposes
13 of the deposition, at least. So at least as of right now he's
14 represented, and I'll provide that information as well.

15 THE COURT: All right, thank you.

16 All right. Anything else as to Vanguard America?

17 MR. BLOCH: Judge, if I may make one point which is
18 relevant to Vanguard, but I think it's very relevant to
19 everybody, so maybe it's worth addressing right now. And that
20 is, there are a number of social media accounts that we did
21 not receive documents to or from because the defendants --
22 because the accounts were disabled or suspended or perhaps
23 deleted by the platform itself. And so a number of
24 defendants, including I believe Mr. Hopper, provided
25 credentials to the vendor, but those credentials were

1 ineffective because the platform had suspended the account and
2 the platform needs consent from the defendants themselves.

3 And so a number of these social media accounts, I
4 think the process that needs to happen is the defendants or
5 their lawyers need to work not just with the vendor but also
6 with the social media platforms, including Facebook. We
7 created a process for Twitter. But I think the -- the general
8 point is I -- just because an account was suspended or
9 disabled does not mean that documents are not recoverable from
10 that account. What it does mean is that the defendants need
11 to work with the social media platforms to give them consent
12 for the platform to give documents to the vendor.

13 And I will just say it's -- it has been a -- an
14 onerous process for plaintiffs to try to help facilitate that
15 process, which we've done. We have been working with Google
16 and Facebook to try to come up with processes for which the
17 defendants can give consent to have the platforms send
18 documents to the vendor. But frankly, the -- I think it is
19 the defendant's responsibility to do what they need to do to
20 work with the platforms to recover documents. And if they
21 have forgotten a password or the account has been suspended
22 there are -- the platforms do have processes in place to
23 recover those documents, but it requires communication with
24 the defendants or their lawyers themselves.

25 So I would just -- my hope is that part of the order

1 that comes out of this process is that the defendants are
2 responsible for recovering documents from the platforms even
3 if they have forgotten the password or the account has been
4 suspended. And I think that applies to Vanguard and a number
5 of other defendants.

6 THE COURT: Okay. Does anyone on behalf of the
7 defendants want to address that? Mr. Kolenich or --

8 MR. KOLENICH: Yes, sir, thank you.

9 Again, as we said before, I am nothing but
10 sympathetic to the plaintiffs here and the efforts they have
11 gone through so far. Nevertheless, there is a little bit of
12 disagreement. And I believe we've discussed this before,
13 myself and Mr. Bloch, at least. The large social media
14 companies -- for example, Facebook and Twitter already did
15 it -- are flat refusing to communicate with me for several of
16 the defendants.

17 I was able to communicate with an attorney for Gab,
18 and we got that done in a day, day and a half, getting
19 Mr. Parrott Gab information. But where they won't communicate
20 with us, what are we supposed to do? Ordinarily, if somebody
21 doesn't want to make friends with me or answer my requests as
22 a lawyer, I send them a subpoena, I file a lawsuit, do
23 whatever I've got to do. In this case that's just going to
24 slow things down even more.

25 So it's been my impression and was my understanding

1 that Mr. Bloch at least at one time agreed with this, but it
2 is better for them to spearhead this effort because they are
3 East Coast lawyers, well-heeled, well-staffed. Cooley LLP is
4 not going to get blown off by Facebook or Twitter or anybody
5 else. I haven't had any luck except with Gab getting anybody
6 to communicate with me directly at these large social media
7 companies.

8 MR. BLOCH: Judge, the problem is that, when we are
9 able to make contact with the platforms, inevitably their
10 response is that we need response from the defendants. So we
11 are in fact unable without the cooperation of the defendants
12 to recover documents from those accounts.

13 We have contact information I believe for some of
14 these platforms -- facebook, I believe, I would have to
15 check -- which we're happy to send along to Mr. Kolenich or
16 even happy to put in a good word for him, I guess, to tell
17 them to work with the defendants. The fact of the matter is
18 we can't actually do it without their cooperation, and it's
19 incredibly onerous for us to have been trying to do that.

20 MR. KOLENICH: This is Mr. Kolenich. I think that's
21 what has to happen. They have to make the introduction,
22 spearhead the effort, and we will sign -- you know, the
23 clients I have left, there's no problem. They are fully
24 understanding that they have got to sign these documents, and
25 stop hemming and hawing and complaining about the discovery

1 process. We're ready to go and we want to move this forward
2 as fast as possible just like the plaintiffs do.

3 So what -- what we're missing, you know, we'll sign
4 whatever documents to be presented. I will be happy to make
5 the first attempt if Mr. Bloch has contact information, but
6 when that doesn't work I don't want the plaintiffs to bow out
7 of this process because that's going to slow things down.
8 We've got to work together to get these social media companies
9 to cooperate with our effort here.

10 MR. BLOCH: Judge, we are, as always, happy to do
11 whatever we can to help facilitate the collection and
12 production of documents. That said, I think it needs to be
13 clear that it is the defendant's responsibility to collect
14 documents within their possession, custody, and control.
15 Documents that a social media platform has are within the
16 defendant's possession, custody, and control, even if,
17 generally speaking, those accounts have been disabled or a
18 defendant forgot a password.

19 So we remain happy to help facilitate, but at the
20 end of the day I think it needs to be clear that it's the
21 defendant's responsibility to recover these documents. And to
22 the extent they can't, I -- my request of Your Honor,
23 generally speaking, was that whatever deadline you set today,
24 that after that deadline there should be a presumption that
25 the defendant -- to the extent there are social media accounts

1 from which we have no documents that there should be a
2 presumption that those have been willfully withheld, unless
3 the defendants can show some sort of effort to recover it
4 themselves because we can't -- it just can't be the
5 plaintiff's responsibility to recover these documents,
6 notwithstanding the fact that we are happy to help.

7 MR. KOLENICH: Mr. Kolenich again. Yes, complete
8 agreement it is and has been our responsibility to recover
9 accounts and get documents from those accounts. I think we're
10 only talking about accounts that have been locked against our
11 will or deleted without our authorization by social media
12 accounts. That's all. We would disagree those are within our
13 custody and control, you know, or that any presumption should
14 arise when the defendants took no action to block those
15 accounts or delete those accounts.

16 And we are -- you know, we are attempting to get
17 those accounts. We have recovered all passwords that we can
18 recover and provided that to the vendor and/or to the
19 plaintiffs, and we're working on the other ones. But really,
20 to my knowledge, Facebook and maybe Instagram are the only
21 ones we are talking about at this point because Twitter has
22 been dealt with.

23 THE COURT: Okay. Do any other defendants or their
24 counsel want to say anything on this issue, Mr. DiNucci or
25 Mr. --

1 MR. DINUCCI: Yes, I do, Your Honor. This is John
2 DiNucci. A couple observations, not necessarily in a logical
3 order, Your Honor.

4 I concur, by and large, with Mr. Kolenich's
5 comments. I have had difficulty getting responses from big
6 law firms, too. I wrote to Perkins Coie, if I recall
7 correctly -- they represent Discord -- back in January. Never
8 got the courtesy of return phone call. Never got the courtesy
9 of an email. -- trying to spring loose everything from
10 Discord. Discord has been a particular problem.

11 My client has gone ahead and directly communicated
12 with Discord to give them him his consent under the Stored
13 Communications Act. We run into a glitch with IDS that was
14 supposed to be proactive to some extent on that issue. We're
15 still working with IDS. IDS is a factor in this, too, Your
16 Honor. I wrote to IDS back in August of this year. They were
17 supposed to get ahold of my client, Mr. Spencer, for something
18 called two factor authentication so that they could access
19 some of the emails. They never got back to him. They were
20 going to get back to me to try to spring loose Discord stuff.
21 They did not. I wrote to them the other day for follow-up.
22 So they --

23 THE COURT: Without -- without getting totally into
24 the -- into the weeds, you know, I want to look at kind of the
25 bigger picture of this, and it -- it sounds like there's some

1 agreement between plaintiffs and defendants these documents
2 are potentially relevant and need to be recovered. So it
3 sounds like it's more of a process in figuring out how to
4 approach it to make sure these documents are made available.
5 And that's -- that's really what I want to address right now.

6 Mr. DiNucci, is there disagreement about that?

7 MR. DINUCCI: I concur. We have a process. It may
8 be somewhat haphazard due to that fact that people like me
9 don't know what the heck they are doing when it comes to
10 electronically stored information. I'm a trial lawyer, not a
11 discovery expert. I don't know a whole lot about this
12 subject. I will thank Mr. Bloch. He has been extremely
13 cooperative in the matter. He's given me guidance that
14 otherwise I would have had to go pay an awful lot of money
15 for. And that's an issue. My client is running out of money.

16 But no, we agree they are entitled to information.
17 There is a process. I've learned a lot in the process. My
18 client, for example, now that we know about Stored
19 Communications Act and its impact, he has signed consents that
20 have gone to Discord, to Instagram, to Twitter, to Facebook.
21 We do, however, in that process need cooperation from IDS, and
22 we're going to get it. I heard back from them yesterday.
23 They are going to be contacting me and/or Mr. Spencer. So
24 there's a process. It's just a question, some glitches along
25 the way in the time it's taking. I'm like Mr. Kolenich. I'd

1 like to get this over with and get to trial. We want to get
2 it over with, too.

3 THE COURT: All right. Any other defendants want to
4 say anything on this?

5 MR. HEIMBACH: Your Honor, this is Matthew Heimbach.
6 On this there's a couple things. But on the first point, I'd
7 like to bring up before the Court the licensed attorney that
8 is willing to represent me pro bono. He is licensed in both
9 the state court and the federal courts, but he does not have
10 the -- the bar in the Commonwealth of Virginia. It's been,
11 essentially, impossible to try to find local counsel due to
12 the political nature of this event, and it's prohibitive in
13 terms of the cost, really, even if someone would agree.

14 So I wanted to bring it before the Court to see
15 if -- especially to help move this process along, to assist in
16 discovery. This lawyer also has experience with social media,
17 which would be helpful in regards to what we're talking about.
18 But whether the Court would consider to help move this process
19 along waiving the local counsel rule so that I would be able
20 to have proper legal counsel.

21 Because the other side, I mean, just as witnessed by
22 this call, has a tremendous amount of legal counsel. And even
23 Mr. Bloch said earlier in the call it would be helpful to have
24 a lawyer to deal with these issues. So that would I think
25 apply in my case as well. So I would ask the Court if he

1 would consider waiving the local counsel rule.

2 THE COURT: Mr. Heimbach, I think it would be to
3 your benefit to have an attorney, and I think it's important
4 to have an attorney in this case, but there are -- rules about
5 who can appear in court are set by the court as a whole and
6 it's not something that's waived on a case by case basis.
7 That rule applies for every litigant who appears in this
8 district, and it's not something that I'm going to waive or
9 that I think an individual judge would have the authority to
10 waive in a particular case.

11 I understand -- I understand, you know, the
12 difficulty that you're in. I would just encourage -- if that
13 attorney is going to represent you pro bono, I would just
14 encourage that attorney to try to reach out to, you know,
15 anyone who is admitted in the western district -- I think
16 there are plenty of attorneys who are here -- and see if they
17 could associate.

18 MR. HEIMBACH: Your Honor, on that I would just say
19 that, first of all, retaining counsel that's not pro bono
20 essentially would be impossible due to being cost prohibitive.
21 But due to the political nature of the event, I mean, just
22 looking back for decades someone who represented a Klansman or
23 something like that in the 1970s gets known for the rest of
24 their career as a, quote, unquote, Klan lawyer. The attorneys
25 I've talked to have no interest in, I mean, essentially,

1 career suicide. Regardless of the merits of the case, then
2 there's the prohibitive nature of retaining an attorney.

3 So, I mean, if -- if the Court believes that it
4 would be helpful and reasonable and also help with the entire
5 process to move it along for me to have representation, can
6 the Court appoint an attorney for local counsel that could be
7 utilized or another avenue? Because as it stands I will not
8 be able to -- I have not been able to find an attorney, and
9 then, even so, most of the attorneys I have spoken to I do not
10 have the financial resources for. So I would be essentially
11 given second-class justice due to my inability to properly
12 represent myself if the Court can't assist in this or grant
13 some sort of waiver to allow me to be represented.

14 THE COURT: Mr. Heimbach, I won't go through all the
15 reasons for the rules attorneys be admitted to practice in
16 this district, or at least in a pro hac vice admission and
17 that there be an attorney who is admitted to practice in this
18 district who is associated with that pro hoc attorney, but
19 there are good reasons for it.

20 MR. HEIMBACH: Well, would the Court be willing to
21 appoint an attorney?

22 THE COURT: Mr. Heimbach, there is no authority for
23 the Court to appoint an attorney to represent you. I don't
24 have the authority to do it. There's no statute, there's no
25 law that -- that allows that in this type of a case.

1 MR. HEIMBACH: I understand, Your Honor. I was
2 speaking specifically just as local counsel, not for them to
3 really do any of the work. But if the -- if the bar --

4 THE COURT: It's the same thing. I don't have the
5 authority to appoint an attorney to represent you. I just
6 don't. And I -- I appreciate your plight, and I understand
7 it's expensive, and I think it's important for you to have an
8 attorney. And if there was something I could do, believe me,
9 it would -- as everyone has acknowledged already on this phone
10 call, it would make my job smoother to be able to work through
11 these issues if you were represented by an attorney. I would
12 like you to be represented by an attorney. It's just I don't
13 have the authority to do it. And I have to act within my
14 authority.

15 MR. HEIMBACH: I understand, Your Honor.

16 In terms of, I mean, waiving rules that are not
17 etched in stone, nor the Ten Commandments, the only work
18 around I see is, I mean, given that I have an attorney willing
19 to do this pro bono, especially given his experience with
20 social media and in cases that he has done that would be
21 incredibly helpful not only for myself but potentially for the
22 entire defense team to help work through discovery, get this
23 done, it seems like it's in everyone's best interest for me to
24 be able to have this representation for the sake of the case.
25 I mean, is there no capacity given, economic situation, the

1 process of discovery --

2 THE COURT: Mr. Heimbach, I'll just say somebody who
3 isn't admitted to practice in this court and who can't
4 associate with a local attorney to be pro hac cannot enter an
5 appearance in this case on your behalf. Those attorneys can't
6 file anything or can't appear at hearings, things like that.

7 So, you know, if you want to try to get advice from
8 this attorney, if you want to try to comply with your
9 discovery obligations -- I mean, the attorney can't sign
10 discovery responses for you or issue discovery responses for
11 you or anything like that, but you can talk to that attorney
12 and see if he or she is willing to assist you in complying
13 with some of your discovery obligations, but, ultimately, the
14 responsibility is on you.

15 And I think we need to move on. We have a lot to
16 address today and really the question I was asking was, does
17 anybody else have anything they want to say about some of
18 these social media accounts that have been disabled or deleted
19 by the platform and the defendants providing their consent to
20 have -- to have these documents essentially be recoverable by
21 the platform? Anybody else have anything to say on that?

22 MR. REBROOK: Your Honor, this is Edward ReBrook.

23 THE COURT: Yes, sir.

24 MR. REBROOK: Your Honor, would it be possible for
25 us to just submit to plaintiffs a blanket agreement that we

1 agree to allow them to access or attempt to access any of
2 these disabled accounts?

3 THE COURT: I have a feeling -- Mr. Bloch could
4 probably answer that, but I have a feeling that each
5 particular social media account or provider is going to want
6 to have their -- their own consent. But I -- but I think
7 it's -- I do think it's the defendant's responsibility to
8 provide that consent because this is part and parcel with
9 meeting your discovery responsibilities in providing
10 potentially relevant information.

11 Mr. Bloch, is there a blanket consent that can be
12 provided or is it something that each social media platform
13 provides their own?

14 MR. BLOCH: Yes, Judge, you are correct. I don't
15 believe there's a social media platform that would accept that
16 sort of blanket consent. They each want individual consent
17 from the defendant, and they often each have their own
18 individual consent forms.

19 THE COURT: I think we've addressed this enough.
20 What I'm going to do is put it in the order that you-all need
21 to work together on this. The defendants are going to have to
22 provide any consents that are necessary for social media
23 accounts that -- that may have relevant and discoverable
24 information, and it is probably going to require the parties
25 to work together. It may even require you-all to get on a

1 conference call with one of these providers. But I think
2 that's something that you-all can do, and I'm going to order
3 that the consents be provided. Reasonable time I would think
4 would be at the outside 14 days to have that information
5 provided to the -- provided to the social media accounts.

6 All right. Why don't we continue on with some of
7 these individual discovery status for some of the individual
8 defendants. And Mr. Bloch, do you want to just take up
9 Mr. Kolenich's clients? I think we have Mr. Kessler and
10 Damigo and Identity Evropa and Parrott and Traditionalist
11 Worker Party?

12 MR. BLOCH: Sure. Judge, my sense with -- sorry, go
13 ahead.

14 THE COURT: Go ahead, Mr. Bloch.

15 MR. BLOCH: Well, Judge, with respect to
16 Mr. Kessler, I think the issue is similar as the one that we
17 just discussed. He has a number of social media accounts that
18 we don't have documents from, and that's -- that the vendor
19 has not collected. And I think it, frankly, should be on him
20 to figure out the processes by which those platforms will
21 produce documents to the vendor. I think the issue is the
22 same with respect to Mr. Damigo.

23 THE COURT: All right. Mr. Kolenich, what's your
24 view on the production?

25 MR. KOLENICH: I think it's just basically what we

1 just discussed. I'm going to have to go over sort of line by
2 line what the plaintiffs' concerns are. I don't necessarily
3 agree that there's a lot outstanding that we don't have pass
4 codes for or haven't provided. To the extent that there is
5 Facebook and these others, they have been a problem, we can't
6 communicate with them, you know, we'll deal with that. We'll
7 get all that done within the confines of a Court order or do
8 the best we can and explain why we haven't been able to if it
9 comes to that.

10 Again, we agree that it is our responsibility on the
11 first instance. Just when we run into this stone wall from
12 the social media company there is literally nothing else I can
13 do other than sue them or subpoena them, and it seems to work
14 better if we, as said before, get an introduction from the
15 plaintiffs. So we will go through all that. I'll work with
16 Mr. Bloch on that and we'll see where we're at, what the
17 deficiencies are and what's left for my men to sign.

18 I just want to stress they will do it and they will
19 do it quickly. I don't want have any more blowback from these
20 remaining clients. We've gotten rid of the most reluctant
21 ones, and we're prepared to move with much greater speed than
22 has been the case in the past.

23 THE COURT: And for Identity Evropa, it looks like
24 Patrick Casey was someone that you have identified. What is
25 the status there?

1 MR. KOLENICH: Yes, he is the primary custodian of
2 records, other than Damigo and Elliott Kline. They are
3 willing to file declarations, but they don't have, you know --
4 not known to them to have anything that they shouldn't have
5 relative to Identity Evropa, or that they don't have. I do
6 also have a list they have identified as members -- this is a
7 couple dozen -- I believe members of Identity Evropa who were
8 physically present in Charlottesville. About half of those
9 are not men who have been publicly identified or doxed as they
10 say at this point, so we will negotiate with the plaintiffs on
11 how to get those names to them and proceed with whatever
12 discovery they want to do there.

13 MR. BLOCH: Judge, if I may with respect to
14 Identity Evropa. Again, this is Mr. Bloch. I would say two
15 things. If I understood -- I'm not sure I understood
16 Mr. Kolenich correctly, but it is not satisfactory to us if
17 this is what you're saying, that Mr. Kline has the same
18 documents that Mr. Casey has access to.

19 Mr. Casey obviously has his own documents that are
20 material and responsive to this case on his cell phone, on his
21 own email accounts, on his own social media accounts, and none
22 of those, as far as I understand it, have been provided to the
23 vendor.

24 With respect to -- the issue with respect to
25 Identity Evropa I think is the same as NSM which is that it

1 doesn't appear that anyone has done a reasonable investigation
2 to determine who within that organization has responsive
3 documents. We identified Patrick Casey. It has been a lot of
4 effort, to say the least, to get Mr. Casey even prepared to
5 potentially cooperate, although I don't believe he has
6 provided anything to the vendor. And he's, as far as I
7 understand, equally important in terms of a custodian as
8 Mr. Damigo or Mr. Kline. As the Court is well aware of, we
9 have nothing from Mr. Kline.

10 So to say that Mr. Casey is prepared to affirm that
11 he -- Mr. Kline has access to the documents that he has, and,
12 thereby, satisfy the responsibility for Identity Evropa, you
13 know, puts us in the same place, and that is having nothing
14 from Identity Evropa. So there needs to be that investigation
15 by Mr. Kolenich to figure out who has responsive documents,
16 Mr. Casey clearly being one of those people. And each of
17 those people need to provide their accounts and devices to the
18 vendor.

19 MR. KOLENICH: This is Mr. Kolenich. I think I did
20 perhaps misspeak. I didn't mean to state that they were
21 relying on Mr. Kline as the only source of information.

22 Without getting into the weeds, as the Court
23 mentioned before, Mr. Casey was not an officer of the
24 corporation or in charge of anything at the relevant dates,
25 and we continue to disagree with the plaintiffs his personal

1 devices, with the exception of his cell phone that he had at
2 the time, would have any responsive documents on it as
3 distinct from devices that he has technical control over now.

4 We'll get this squared with the plaintiffs. We'll
5 come to an agreement, and we'll produce whatever devices we
6 agree to. And if we have a disagreement that needs to be
7 adjudicated, we'll do that, again, with more speed than we've
8 been accustomed to in this case.

9 And Mr. Bloch, I'll flesh that out for you outside
10 the confines of this hearing. Obviously, we're on the record
11 and have a lot to do here. Thank you.

12 THE COURT: Mr. Kolenich, have you identified
13 particular people within Identity Evropa who were part of the
14 leadership of this entity that might have responsive
15 documents?

16 MR. KOLENICH: I'm sorry, Your Honor. I meant to
17 address that. Other than Mr. Damigo and Mr. Kline and now
18 Mr. Casey, there is no apparent leadership. There are no
19 other people who would have had custody of documents other
20 than individuals who were present at Charlottesville and went
21 to the event. So those are the three who could possibly be
22 considered custodians: Damigo, Casey, and Kline.

23 I do have a list of members that we've been able to
24 identify that they will affirm are members of Identity Evropa
25 and were present in Charlottesville, but those are more in the

1 nature of eyewitnesses rather than document custodians,
2 except, of course, as to their own personal information.

3 THE COURT: All right. Mr. Bloch?

4 MR. BLOCH: Judge, I would just say I'm happy,
5 obviously, to speak and meet with Mr. Kolenich further. It's
6 my understanding that Mr. Casey was in charge of Identity
7 Evropa until a few months ago. And some of our document
8 requests asked for documents that concerned, for example,
9 defendants in this case like Identity Evropa. So -- and I
10 believe -- I'd have to double check. I believe Mr. Casey was
11 present in Charlottesville. So the idea that he would have a
12 cell phone that doesn't have responsive documents is hard for
13 me to imagine. It is an issue.

14 One of the things I'm trying to do is avoid,
15 obviously, issues that we need to bring to the Court, but
16 whether -- you know, Mr. Casey's cell phone and social media
17 accounts are things that we would move to compel to the extent
18 Mr. Kolenich is taking the position that those don't have
19 responsive documents. So I would love to avoid creating
20 another issue for the Court.

21 THE COURT: Mr. Kolenich, are you -- are you
22 intending to provide discovery responses from Mr. Casey? It
23 sounds like that was Mr. Bloch's impression from the email
24 that he sent yesterday, that there are some documents that are
25 forthcoming.

1 MR. KOLENICH: I am going to have to go back and
2 look at the email history with regard to Mr. Casey. I don't
3 agree that we're staking out a position that we're going to
4 refuse this or refuse that such that would even come near a
5 motion to compel. I think it's better if Mr. Bloch and I get
6 together on this and see where we're at. I don't know if
7 we're effectively communicating talking here on the record.

8 But again, Mr. Casey is not -- I know there has been
9 some pushback from Mr. Casey in the past with Mr. Bloch's
10 request, and that's all been resolved. That's not going to be
11 an issue going forward.

12 I do want to clarify the phone he had -- he was
13 present in Charlottesville. The phone he had at the time he
14 no longer has and the current phone is a new -- it's not going
15 to have anything on it. He will send it if you want, but it's
16 not going to have anything on it.

17 We have his entire phone record, though, from the
18 provider service. All the numbers he called, all the numbers
19 he received calls from, and the text message numbers from his
20 service provider. I can't remember what that is now. We
21 already have that. It was recently received. I'll pass that
22 on to Mr. Bloch as part of our forthcoming discussion.

23 THE COURT: All right. And then how about Matthew
24 Parrott and also Traditionalist Worker Party, Mr. Bloch?

25 MR. BLOCH: Judge, Mr. Parrott, there are still

1 accounts that have been identified by the vendor that they are
2 not able to access with respect to Mr. Parrott. I don't know
3 what has gone on between Mr. Parrott and the vendor on that
4 issue, but what I do -- all I have to go by is the vendor
5 report. They are not able to access those accounts.

6 THE COURT: Mr. Kolenich, do you know what the
7 problem is there? Is it that these accounts have been
8 disabled or is it that Mr. Parrott needs to provide better
9 information?

10 MR. KOLENICH: Some of them are social media
11 disabled and we haven't been able to recover the passwords.
12 In other cases Mr. Parrott has told me that he has given
13 correct information to the vendor more than once and he
14 doesn't know what the problem is. So the vast majority of
15 what was listed in Mr. Bloch's letter we consider erroneous,
16 and I guess that's another one of the things we have to work
17 through here.

18 But the passcodes that we have provided that
19 apparently the vendor is saying don't work, I personally
20 checked them, and they do work, so we're not sure what the
21 disconnect is here.

22 THE COURT: All right. And then from the
23 Traditionalist Worker Party?

24 MR. KOLENICH: Mr. Parrott's devices and
25 Traditionalist Worker Party's devices are coextensive in this

1 instance.

2 MR. BLOCH: Judge, the only thing I say with respect
3 to Traditionalist Worker Party is one clear custodian for TWP
4 was Tony Hovater. We have diligently pursued trying to get
5 documents through Mr. Kolenich from Mr. Hovater. It was our
6 understanding that he was to going to provide documents. He's
7 in the same position as Mr. Casey. He's a clear, obvious,
8 custodian of relevant documents for TWP, and we learned about
9 two weeks ago that he apparently left the organization.

10 Whether or not that puts the onus on us now to get
11 the documents, I'm not sure, and we certainly will pursue him
12 to try to get the documents. It does not absolve TWP of
13 having had to produce those documents previously. But,
14 frankly, we would appreciate documents from Tony Hovater. I
15 don't think his having left the organization two weeks ago
16 gets them out of that obligation, but that's where we stand.

17 THE COURT: Mr. Kolenich, what --

18 MR. KOLENICH: Yes, Mr. Hovater did tell me that he
19 would fully cooperate. He would fill out a declaration of
20 what devices he had and what was responsive. He told us he
21 would produce -- you know, cooperate with discovery process
22 and get with the vendor. The very next day he resigned from
23 the organization. We no longer have control over him or his
24 devices. We told him either do this -- you have to do this.
25 Either you're an officer of the company and you have to -- you

1 have to act on the company's best interest and have a
2 fiduciary duty, or you're an underling and you have to do what
3 you're told to do. He chose to resign. That's where that's
4 at. Mr. Havater is no longer communicating with Mr. Parrott.
5 He will not communicate with me.

6 We don't disagree that while Mr. Hovater was an
7 officer of the company that he is the custodian of documents.
8 It's just that he no longer has any ability to -- you know,
9 similar to other people that have been involved in this
10 litigation, we don't have any ability to communicate with him
11 at this point. And we still in trying to get him to
12 cooperate even after his resignation -- I'll provide some
13 contact information I have from Mr. Hovater Mr. Bloch, but
14 he's out of our control at this point.

15 THE COURT: All right. Is any -- does anybody have
16 a real beeping noise on their phone?

17 MR. DINUCCI: I'm hearing it, Your Honor. This is
18 John DiNucci. I don't know where it's coming from, though.

19 THE REPORTER: It's troubling for the court
20 reporter.

21 UNIDENTIFIED SPEAKER: Yeah, we hear it as well.

22 THE COURT: Does anybody know whether that's
23 originating from them? It's getting worse.

24 Well, just to wrap up that one thing. For Mr.
25 Hovater, what I'm going to do is I'm going to include him in

1 the order concerning Traditionalist Worker Party that he would
2 be required to provide documents. Mr. Bloch, it means that
3 you're going to have to issue a third party subpoena to him,
4 though

5 MR. BLOCH: Okay, Judge. Will do.

6 THE COURT: All right. Hold on a second. Let's see
7 if we can deal with this beeping noise.

8 I'm not sure what that beeping noise is. Let's just
9 do our best.

10 All right. Mr. Kolenich, as far as your client, is
11 that -- that you're currently representing; is that right?

12 MR. KOLENICH: Yes. I believe we touched all of it,
13 Your Honor.

14 THE COURT: All right. I do want to try to get an
15 update from you about Mr. Cantwell and Mr. Ray and where
16 those -- what else is left to do with them.

17 Mr. Bloch, if there's -- you've indicated some
18 things in your email about Mr. Cantwell that we need some
19 additional accurate credentials?

20 MR. BLOCH: That's right, Judge. Mr. Cantwell is I
21 think in the same position of having social media accounts
22 that the vendor has not been able to collect from.

23 THE COURT: And are those because the accounts are
24 disabled or is it the information that he's provided is
25 inadequate?

1 MR. BLOCH: It appears to be a mix, Judge. The --
2 some of the -- and I can send the Court -- I think all parties
3 have the vendor report, but I'm happy to send it to the Court
4 after this call, the new vendor report from last night. There
5 are some accounts that he was -- that the vendor was unable to
6 collect with the credentials that he provided. And some were
7 the vendor said the password doesn't work.

8 THE COURT: Okay. Well, for him I'm just going to
9 include in the order that -- there is going to be a deadline
10 for which to provide accurate information to the vendor, but,
11 also, to provide consents where the -- where the accounts have
12 been disabled. It sounds like that would cover Mr. Cantwell's
13 issues.

14 MR. BLOCH: I think that's right, Judge. Thank you.

15 THE COURT: And Mr. Kolenich, is that your
16 understanding as well?

17 MR. KOLENICH: I'm afraid I don't know exactly what
18 Mr. Cantwell's issues might be, but no doubt Mr. Bloch's rate
19 is probably accurate and I'm sure the Court's order is
20 reasonably.

21 THE COURT: All right. And then Mr. Ray, I mean,
22 there are a number of things outstanding. So it looks like a
23 number of accounts have been identified, but there are -- he
24 has not credentialed to be able to access those; is that
25 right?

1 MR. BLOCH: I believe that's right, Judge, and it's
2 my understanding that he hasn't been cooperative for months.
3 There's also a device I believe he hasn't provided.

4 THE COURT: All right, the second laptop?

5 MR. BLOCH: Right.

6 THE COURT: All right. Well, we'll include those in
7 the order as well.

8 Mr. Spencer and Mr. DiNucci, it sounds like there
9 are quite a lot of documents. There may still be a few things
10 that are outstanding; is that right, Mr. Bloch?

11 MR. BLOCH: I'm sorry, Judge. With which
12 defendants? Spencer? If you're talking about Mr. Spencer,
13 Judge, I think that's right. I do believe Mr. DiNucci is
14 working with the vendor to work that out.

15 THE COURT: Okay. Mr. DiNucci, anything that we
16 need to address on that? Are you working through things?

17 MR. DiNUCCI: We are working through things, Your
18 Honor. For example, the last IDS report I saw which is
19 actually from September the 9th -- I did not get one last
20 night with an update. They had asked -- said they needed
21 information from us with respect to Twitter, Instagram, and
22 Facebook. Mr. Spencer over a month ago had actually sent
23 Stored Communication Act consent to those providers.
24 Apparently, there was no communication, nothing sent by the
25 platform to IDS. I communicated with IDS to make sure that

1 they, IDS, hook up, if you will, with those platforms, for
2 example, so they get the information that -- that the
3 platforms would have.

4 Again, I'm working with Mr. Bloch's kind assistance,
5 about the Stored Communication Act and ESI, we're working with
6 the platforms to get the information available to IDS.

7 THE COURT: All right.

8 How about Mr. Heimbach? Mr. Bloch, can you -- looks
9 like there's only a handful of documents turned over and that
10 the third party vendor is having difficulty accessing a number
11 of electronic accounts.

12 MR. HEIMBACH: Matthew Heimbach, Your Honor.

13 First of all, in Mr. Bloch's email as it was
14 explained to him in the deposition, and Mr. Kolenich can
15 follow this up, that the -- specifically the major part that
16 he is requesting, which is the information from the internal
17 server of PWP, I do not have access to, but Matthew Parrott
18 had the entire server imaged provided to Mr. Kolenich and I
19 believe provided to the vendor.

20 So all the information he's requested he already
21 should have received or is currently in Mr. Kolenich's
22 possession and should be given over then. So that's --

23 THE COURT: Mr. Heimbach, hold on a second. I want
24 to hear from Mr. Bloch so that we know what he thinks is
25 outstanding. You may be telling us things that he's not

1 disagreeing with. So let me hear from Mr. Bloch, and then I
2 just want to make sure we're on the same page. Mr. Bloch?

3 MR. BLOCH: Judge, to be clear, we have nothing from
4 the vendor from Mr. Heimbach. So I think the server is one of
5 those, the internal ticket system is one of those items. I
6 understand Mr. Heimbach is saying that Mr. Parrott has control
7 over that. I guess we will see when we receive Mr. -- when we
8 go through Mr. Parrott's production whether that's in fact the
9 case. But there is -- there were seven or eight accounts that
10 Mr. Heimbach disclosed as responsive and we have zero
11 documents from any of them.

12 MR. HEIMBACH: Okay. But respectfully, what does
13 that even entail when I provided the vendor the information?
14 Like why hasn't the vendor sent it then? I don't understand
15 what plaintiffs are paying them for if they have collected the
16 information and it hasn't been sent.

17 THE COURT: Mr. Bloch, do you know if the
18 information has been collected at this point from these
19 accounts?

20 MR. BLOCH: It's -- it's not -- I don't believe it's
21 been collected from a number of the accounts. I think they
22 have collected documents from some accounts. There were some
23 accounts that the vendor reports the password was not provided
24 to or the password was incorrect.

25 The process that we had worked out, which I thought

1 Mr. Heimbach was aware of, was the vendor images and collects
2 the documents that then go to the defendants for review and
3 the defendants then produce the documents. It sounds like the
4 review and production part of the process hasn't happened, but
5 there are still some accounts that appear not to have been
6 collected because an accurate password wasn't provided.

7 MR. HEIMBACH: Well, I can say to the Court -- this
8 is Matthew Heimbach -- that I provided all of the available
9 information that I have in this regard and the most recent
10 passwords I had access to.

11 I have complied with sending my phone in, turning
12 over doing two-step verification over my Gmail in question.
13 The private server, as previously mentioned, would have I
14 would say probably all -- almost all relevant documents have
15 been imaged on behalf of Mr. Parrott and Traditionalist Worker
16 Party. So I'm not exactly sure what really is being asked
17 here.

18 THE COURT: Well, you know, I don't know, either.

19 I mean, it sounds like from Mr. Bloch that the
20 vendor has been unable to access some of these accounts
21 because the password didn't work. Have you been told that,
22 Mr. Heimbach? Have you had communications with the vendor?
23 Do you know if --

24 MR. HEIMBACH: Yes, Your Honor. I believe the
25 majority of the accounts in question have been deleted, and

1 Mr. Bloch should have copies from before my deposition, I
2 believe, of my requests directly to social media companies for
3 information specifically citing *Sines v. Kessler* as to the
4 reason why I wanted access to the information to provide the
5 plaintiffs with discovery. And I was notified that these
6 accounts were unavailable. I had done the -- the plaintiffs
7 had requested assigned things for Discord and Twitter which I
8 have provided to them.

9 I really don't know what more they are expecting of
10 me because I've really tried to comply on every step. I am
11 certainly not an expert in any of this whatsoever. I've been
12 trying to muddle through it. I've tried to be very responsive
13 with Mr. Bloch to ask questions and answer questions to move
14 this along. So I'm not sure exactly what more he's wanting
15 other than the fact I have already given the vendor the
16 information I have, the devices I have, the accounts I have,
17 my email which I just received verification for and have
18 contacted the social media companies to request this
19 information and have been blown off.

20 I don't know really what more the Court would expect
21 me to be able to --

22 THE COURT: Here's what I -- Mr. Bloch, has the
23 vendor provided you, you know, in its reports with information
24 about what the status is of its efforts to recover documents
25 from these accounts? I mean, is there a report that says, you

1 know, we access -- we are able to access this account, we
2 tried to access this account, the credentials didn't work,
3 tried to access this account but it had been deleted? I mean,
4 is that information available?

5 MR. BLOCH: It is, Judge. And I can say the one --
6 there's one account, which is Mr. Heimbach's Gmail account,
7 where the vendor said they had completed the collection.
8 Every other account, they do not appear -- oh, sorry, one
9 other, which is Mr. Heimbach, the cell phone which he provided
10 he conceded actually doesn't have any relevant documents has
11 also been collected. The rest of them they have not been able
12 to collect from for various reasons.

13 Frankly, Judge, I -- I think what Mr. -- I mean,
14 what we want, obviously, is documents, and we have nothing
15 from anything that he has provided the vendor. What I would
16 suggest is that Mr. Heimbach get in touch with the vendor and
17 work it out with them in terms of what they need and how to
18 get it to us.

19 MR. HEIMBACH: Mr. Bloch, I would ask --

20 THE COURT: Hold on a second, Mr. Heimbach. The
21 difficulty for me is that I don't know why the -- where things
22 stand with the production, so I don't know how I -- how I
23 order anything and make anything move forward in this
24 discovery process unless I can direct a party to do something.
25 Even something specific. You know, that Mr. Heimbach needs to

1 provide consent because, you know, the accounts have been
2 deleted; that he's provided, you know, inadequate credentials;
3 or hasn't turned over certain devices.

4 I think that's -- that's pretty granular, but I --
5 but to make sure that there are specific directions to each
6 party and each defendant so that everybody knows what their
7 responsibilities are and folks can be held accountable for
8 falling below that. I think they probably need that sort of
9 information.

10 MR. HEIMBACH: Your Honor, Matthew Heimbach.

11 If there are anything in terms of social media
12 companies where the credentials don't match, I am willing to
13 provide to the plaintiffs any signed release necessary so they
14 can turn that information over. I feel like part of the
15 problem is myself and other defendants may be held accountable
16 for social media companies deleting our accounts, deleting
17 that information, or not storing it properly for an extended
18 period and then that's being held on us.

19 If the plaintiffs had any of these relevant accounts
20 that they can connect us to, I would sign a release as soon as
21 they send it to me and promptly send it back to fulfill any
22 requirements of the Court. But to send me on an Alice in
23 Wonderland quest to try and track down, you know, Jeff Bezos
24 or Mark Zuckerberg to get documents that I've already
25 requested, I don't know how I could comply with that.

1 MR. BLOCH: Judge, just to -- without me getting
2 into the weeds, just to give an example, Mr. Heimbach
3 disclosed a Skype account that purports to have relevant
4 information and the vendor report reports that the password he
5 provided is incorrect. So what I would recommend is that he
6 get in touch with the vendor and provide the correct password.

7 MR. HEIMBACH: Mr. Bloch, the password is correct,
8 and I attempted to set up with the vendor on multiple
9 occasions to do two-step verification access and I had not
10 heard anything in an extended period about -- something I had
11 already done for my Gmail. So I have already proven myself
12 willing to do this.

13 THE COURT: So, I mean, does it make sense for the
14 order to direct the defendants to contact the vendor for any
15 accounts or to determine whether there are any accounts the
16 vendor has not been able to access and then to provide --
17 figure out why the vendor hasn't been able to access it and
18 direct the defendants to provide whatever information is
19 necessary to access? Mr. Bloch, is that what you're asking
20 for?

21 MR. BLOCH: Judge, I guess I would -- I would make
22 it sort of three parts. That would be the first line, which
23 is to get in touch with the vendor and provide what is needed
24 to be provided.

25 The second one I would say would be to detail in

1 some sort of declaration what steps the defendant has taken to
2 produce documents from a particular account. If in fact it's
3 disabled or deleted and they tried and they couldn't, I guess
4 they should lay that out and we can determine down the road
5 whether or not they have met their discovery obligations.

6 And then finally, at least with respect to
7 Mr. Heimbach, it appears based on the vendor report that there
8 are documents waiting for him to review and produce, and I
9 would ask that he be ordered to do that in short order.

10 MR. CANTWELL: This is Christopher Cantwell. I just
11 joined the line.

12 THE COURT: All right. Mr. Cantwell, this is Joel
13 Hoppe. We have been going for some time.

14 Well, you know, I think Mr. Bloch, I think having
15 that first step to make sure that all the information has been
16 provided correctly to the vendor, I mean, obviously, that
17 needs to happen. That needs to happen -- happen real soon.

18 And then, you know, the next step is the
19 actual documents, once they have been turned over to the
20 defendants, and there needs to be a deadline, a deadline
21 there. And then I think as far as an explanation for what
22 happened to any accounts or documents that don't exist
23 anymore, you know, that's -- I think that's probably something
24 that you would need to raise as soon as the dust has settled
25 or after we've determined that the documents are not

1 recoverable. I mean, I think that's something that you would
2 need to raise in a motion.

3 MR. HEIMBACH: Your Honor, Matthew Heimbach. Just
4 for the record, I don't believe I've received anything from
5 the vendor in terms of giving me access to documents to
6 review. And to be totally honest with you, I don't even know
7 how to do that. So perhaps if the plaintiffs would like
8 to prod the vendor along to make contact or resubmit those
9 documents, it would be helpful so I can actually review them
10 and have them sent.

11 THE COURT: Mr. Heimbach, the way I understand it is
12 that the plaintiffs have facilitated this by agreeing to pay
13 at least at the time for this third party vendor to harvest
14 the documents and then turn them over to you. And it's -- you
15 know, I don't think you want the plaintiff involved in that
16 process, you know, of this vendor transmitting the documents
17 to you before you have had a chance to review them. It's your
18 obligation to be in touch with the vendor and to find out
19 everything that you need to do to make sure that you're able
20 to comply with your discovery obligation. That's what the
21 issue is, is the defendants being able to provide the
22 documents that you're supposed to provide. So you need to be
23 in touch with the vendor.

24 And I'm going to make it real clear in the order
25 that the defendants have an obligation to -- to make sure that

1 they know what vendor needs to be able to provide these
2 documents. And then it's -- you know, the defendants are
3 going to have to review them and turn them over to plaintiffs.
4 And that's how it works.

5 MR. HOPPER: Judge, this is Dillon Hopper. I have a
6 question. I communicated some with the vendor. How is the
7 vendor supposed to give us those documents? Are they supposed
8 to just email those documents back whatever they discover, or
9 is that submitted to a website that we access to to review?

10 THE COURT: I'm probably the one person in the room
11 who doesn't have that -- doesn't have that information because
12 you-all have all been in contact with the vendor. I haven't.

13 Mr. Bloch, do you -- do you know? Is it provided by
14 email? Is it downloaded onto a website?

15 MR. BLOCH: Yes, Judge. My understanding is that
16 it's uploaded to a platform the defendants are given access to
17 to review, and I can after this call email -- if Mr. Hopper
18 doesn't already have the contact information for the vendor,
19 they are responsive and --

20 MR. HOPPER: I have the contact information for the
21 vendor. I've contacted the vendor. But the issue is, in my
22 communications with the vendor, I was not informed on how that
23 information was to be relayed back to me, and I really haven't
24 heard anything from the vendor even -- I contacted the vendor
25 probably two or three weeks ago about my older cell phone that

1 they promptly mailed back to me within a day or two, but they
2 never emailed me anything about, hey, this is the data
3 collected, this is the website that you need to go to to scan
4 this information to send it.

5 So, I mean, kind of in the same boat as Mr. Heimbach
6 is. I don't know where the information is to review. So what
7 I'll do is I'll get in contact with the vendor, and I'll, you
8 know, inform them that we need to review this information so
9 that we can send it to the plaintiff's representation.

10 MR. BLOCH: I think that makes sense. I think
11 that's right.

12 MR. HOPPER: I haven't been informed and I haven't
13 been given any access codes or websites to where this
14 information is held, whether it's on a separate server or it
15 would be mailed back to us. But I'll -- I'll get in contact
16 with the vendor. I'll send them an email after we're done
17 with this conversation, and I'll inform them that all the
18 defendants need access to that information so that they can
19 review it and send it to the plaintiff's representation.

20 MR. HEIMBACH: Matthew Heimbach here. Question:
21 How is the Court -- especially given, you know, the pro se
22 litigants, such as myself and Mr. Hopper and now Mr Cantwell
23 and such, with no legal framing, how are we expected to know
24 or properly review these documents to be able to provide them?
25 Something to us that might not seem to meet the burden of

1 what's requested, an attorney might disagree with or vice
2 versa to send erroneous documents. How are we expected to
3 uphold our obligations to the Court when we have no knowledge
4 or training in legal matters?

5 THE COURT: Well, you have to do your best to get up
6 to speed on it. There are plenty of cases where there are pro
7 se plaintiffs and pro se defendants, and it's your obligation
8 to read the rules and try and comply with the discovery
9 obligations.

10 You know, it's -- we're far from actually being able
11 to identify particular issues in discovery because it hasn't
12 been -- Mr. Heimbach, it sounds like there just hasn't been
13 anything turned over yet. If there are particular issues that
14 come up, talk to Mr. Bloch about, you know, you can -- if
15 there is anything you think you need to withhold, you have to
16 say that to him, and then you-all will discuss it and see if
17 there is a real issue. And if there's a real issue, then you
18 can bring it to me. But I can't provide discovery 101 lessons
19 right now. All right. That's your obligation to do the
20 research.

21 Mr. Cantwell, I do want to bring you up to speed
22 with what has been going on. Mr. Kolenich has filed a motion
23 to withdraw, and I understand that you had terminated his
24 services as well.

25 MR. CANTWELL: Yes.

1 THE COURT: All right. So earlier in the call I
2 said that I would relieve him of his -- any obligation to
3 represent you any further in the case.

4 We did discuss -- Mr. Bloch had sent an email to the
5 Court and cc'ing everyone on it. I don't know if you received
6 a copy of that. It went to Mr. Kolenich, but it was sent
7 yesterday and it identified some -- where Mr. Bloch thinks
8 that the discovery is deficient. Did you receive that?

9 MR. CANTWELL: I'M not aware of a complaint against
10 the -- of any deficiency in my discovery. I'm not yet aware
11 of that, no.

12 THE COURT: It's short. I'll read you what it says.
13 It says for Christopher Cantwell, "Plaintiffs have received a
14 partial production from Defendant Cantwell. However, the
15 vendor has not been able to collect content from the following
16 social media accounts and websites identified as containing
17 relevant content because Defendant Cantwell has not provided
18 accurate credentials for Gab, Facebook, YouStream and certain
19 websites, christophercantwell.com and radicalagenda.com."

20 Do you think that you've provided accurate
21 credentials to the vendor for those?

22 MR. CANTWELL: I'm certain that I have. And there
23 was a -- and I've been back and forth with Mr. Kolenich about
24 this. I gave them the credentials that I have. Those
25 credentials don't -- you know, YouStream I don't even believe

1 is owned by the same company. I don't even know -- like the
2 air space is completely different. It is not even there
3 anymore, okay? IBM bought them out or something.

4 The Gab credentials, I gave them the most recent
5 ones that I have, but as plaintiffs are aware I am banned from
6 Gab. I'm surprised they can't log in using those credentials.
7 So -- I'm sorry.

8 And as for the websites, I gave them -- I sent to
9 Mr. Kolenich a dump of the sequel database which I hoped would
10 suffice. You know, giving them images of the entire website I
11 believe is overly broad because I don't think that I should
12 have to provide the names, addresses, telephone numbers, and
13 credit cards of everybody who has purchased a sticker from me
14 in the years that that website has been online.

15 If what I gave them was all of the published posts
16 for six months prior and six months after the events here in
17 dispute, if there's something more that they want, I'm happy
18 to know what it is that they want. But I think that asking to
19 image the entire website is incredibly overbroad.

20 THE COURT: And Mr. Cantwell, that's something --
21 the particulars, that's something, now that you're
22 representing yourself, you'll need to take up with Mr. Bloch
23 and the other plaintiff attorneys to see if what you provided
24 is sufficient or if there's some additional information that
25 the plaintiffs want that you would agree to. If you openly

1 have an disagreement on that, then you-all can bring it to me.

2 Something else that we discussed during the --
3 earlier in the call is that for some of these accounts the --
4 on social media platforms, if those have been disabled, that
5 it's going to require some cooperation between the defendants
6 in providing consents so that those accounts can be
7 essentially reconstituted by the platform. And I'm going to
8 put in an order that I'm requiring the defendants to provide
9 those consents, but, also, the plaintiffs and defendants are
10 going to have to work together and with each other in trying
11 to recover any information that has been -- has been --

12 MR. CANTWELL: I'd just like to add here, like I
13 said, I've been through this a couple times with Mr. Kolenich,
14 and I'm not certain how much has been relayed across.

15 I know that I gave the consent that was requested of
16 me to Twitter. I believe I gave it to Facebook and to
17 Discord. I don't even know -- I haven't the vaguest idea how
18 I would go about doing that with Gab. Do you want me to email
19 their -- want me to try to find somebody to talk to over
20 there, I'll do it, but I've followed the instructions I was
21 given thus far.

22 THE COURT: You missed a lot of this, but, you know,
23 plaintiff has been doing some work to try and set up a
24 process, and so that's just something that you're going to
25 need to talk with Mr. Bloch about, okay?

1 Because I understand Mr. Kolenich had said that it's
2 been difficult to get -- to get some of these companies to
3 provide the information so the defendants can provide a
4 consent. And that's why I'm saying that you-all are going to
5 need to work together on it, okay?

6 MR. CANTWELL: Okay, I'm happy to do this.

7 MR. BLOCH: Judge, this is Mike Bloch. I'm happy to
8 work with Mr. Cantwell as well. I just would like to point
9 out that I'm not aware of objections that have been previously
10 made on his behalf to the scope of what needs to be produced,
11 and I just wanted to be clear that it's too late in the game
12 to be making those objections now. But I'm certainly happy to
13 work with Mr. Cantwell to facilitate his production.

14 MR. CANTWELL: Well, and I want to state -- like I
15 said, the reason I released Mr. Kolenich is because I realized
16 that even if the Court finds in my favor on that notion that
17 my interests are not being represented, perhaps, due to
18 understandable frustrations with delinquent payments. I
19 definitely told him about this a long time. I definitely
20 relayed these concerns especially about the website.

21 Look, the social media I don't care, but I have a
22 contractual obligation not to throw around customer data all
23 willy-nilly, okay? I have to do that in a precise fashion.
24 For me to give up -- for me to allow the entire website to be
25 imaged by plaintiffs would be a violation of my contractual

1 obligations to my customers, okay? So trying to -- I'm happy
2 to talk to Mr. Bloch off line and we can see what we could
3 figure out that is a more narrow request. You know, I want
4 them to have the information they are looking for, but it
5 seems to me that that would put me in dishonor elsewhere.

6 THE COURT: And I think -- and I think,
7 Mr. Cantwell, that issue was addressed probably over a year
8 ago at this point, and I think Mr. Kolenich was representing
9 your interests on that, and there are other defendants who
10 expressed concerns about providing exactly the kind of
11 information that you're discussing. So I think that's
12 something you and Mr. Bloch can talk about. Getting the
13 credit card receipts and stuff like that, you know, that's not
14 relevant, and I don't think the plaintiffs are seeking that.

15 It is -- it is far too late for objections to be
16 raised about particular discovery requests, but when the third
17 party vendor does provide documents to you and to any of the
18 other defendants, I know there are questions or issues about
19 -- and that's something that you-all can work through in
20 making your production to the plaintiffs in that, all right?

21 MR. CANTWELL: Well, Mr. Bloch, do you have my email
22 address, I take it?

23 MR. BLOCH: I don't know that I have. Why don't you
24 give me the most current and working one.

25 MR. CANTWELL: It's first name dot last name.

1 christopher.cantwell@gmail.com.

2 MR. BLOCH: Got it. I will email you --

3 MR. CANTWELL: Yeah, we'll talk about this. Like I
4 said, I want you to have the information that you want. I
5 just want to do this the right way. And so we'll discuss that
6 further after this, I suppose.

7 THE COURT: All right. Mr. Bloch, is there anything
8 as to specific discovery issues that we should discuss so that
9 we're all on the same page at this point or can we move to --
10 in discussing the schedule?

11 MR. BLOCH: Yes, Judge, I just -- one final
12 overarching point, which is that there is a vendor report.
13 All defendants should have gotten it. I think maybe
14 Mr. Cantwell might need to get it from Mr. Kolenich if he
15 doesn't have it already. And it does spell out pretty clearly
16 what accounts have been collected, what accounts are unable to
17 collect, and why. And just, generally speaking, our request
18 would be that there be a deadline to get documents from each
19 of those accounts and that it be the defendants'
20 responsibility to figure out with respect to each account how
21 to do that. But it is kind of a roadmap for everybody.

22 MR. HEIMBACH: Respectfully, Your Honor, this is
23 Matthew Heimbach. I'm looking at my email account right now.
24 And going back two weeks there is not a single message from
25 the vendor. So I'm not sure if it was not properly sent out,

1 but I don't know about the other defendants, but I do not have
2 a copy of that.

3 THE COURT: All right. Well, you know, I think
4 it's -- everybody is on notice that is out there and that it
5 is something that you need to get. And so, you know, I think
6 if you don't have the vendor report you need to contact the
7 vendor and get the most recent version of it so that you can
8 fulfill your obligations.

9 All right. What I envision as far as a schedule,
10 and it probably makes sense for you-all to talk some more and
11 submit a proposed schedule, but, you know, I think that there
12 needs to be some -- some deadlines within -- have a discovery
13 deadline so that things are not being pushed too far.

14 In the forthcoming order I'll put in a deadline for
15 the defendants to make sure all credentials have been provided
16 and are accurate and that all consents have been provided for
17 social media platforms that may have been disabled and those
18 things.

19 But I think that there needs to be, you know, a term
20 deadline for making sure that all the information is to the
21 vendor. Needs to be some deadlines for the defendants to be
22 providing the documents that they received from the vendor to
23 the plaintiffs. That's one thing I need to get more input
24 from you-all about how long that process is going to take.
25 But I think that we probably don't want to just have one

1 deadline on that. We may want to have a status conference or
2 something during the middle of the deadline because I want to
3 make sure that this moves along properly and that the deadline
4 is going to be -- everyone can comply with their obligations
5 by the deadline.

6 I envision having some status conference throughout
7 this period. And also, you know, need to at some point make
8 sure that depositions are being scheduled and they are being
9 done in a timely way.

10 Have you-all had any discussions about a potential
11 schedule to complete discovery?

12 MR. BLOCH: We haven't, Judge.

13 THE COURT: All right. It makes sense to have that
14 discussion and then you-all circulate some -- circulate a
15 proposal.

16 MR. BLOCH: I think that does make sense, Judge.
17 This is Mike Bloch.

18 THE COURT: All right. Mr. Kolenich, do you think
19 that makes some sense?

20 MR. KOLENICH: Yes, I do.

21 THE COURT: All right. Mr. DiNucci or anybody else
22 want to weigh in on that?

23 MR. DINUCCI: I concur, Your Honor. I have a
24 question for the Court if I'm not stepping over the line or
25 out of bounds here.

1 Does the Court have any sense when we'd actually be
2 able to get this set for trial? I have no idea what Judge
3 Moon's calendar is like and my -- you know, people are
4 asking.

5 THE COURT: Well, it depends on the discovery. I
6 mean, I don't want to set a trial date if there's no
7 reasonable chance of getting it to that trial date.

8 What I want to do is to get a schedule in place that
9 you-all think is reasonable and doable. And then we're going
10 to -- I'm going to keep you on the deadlines and we're going
11 to have some status conferences throughout to make sure that
12 we are going to meet these deadlines, and I'm going to -- I'm
13 going to expect compliance on it. And if we're not hitting
14 the discovery deadlines, then there are going to be -- it's
15 really -- setting the trial date puts the cart before the
16 horse if we don't have a --

17 (Interruption by the court reporter.)

18 THE COURT: Does anybody else have anything else
19 that you want to say as to that schedule? That's really the
20 last thing that I wanted to address today.

21 MR. BLOCH: Judge, I do think it makes sense for us
22 to get together off line and work out some dates. I -- and I
23 agree with you that I think it's imperative that we stick to
24 the production deadlines. We are eager to get the documents.
25 I think, frankly, the deadlines should be sort of the last

1 deadline for them in terms of producing the things that are
2 still outstanding.

3 THE COURT: All right. Why don't we do that.

4 You-all -- I want you to confer over the next, you
5 know, week to possibly two weeks and give me a -- get me a
6 schedule. I'm going to work on an order that we'll get out
7 next week for some of the discovery matters that we have
8 discussed today, and then, you know, probably have to have
9 another conference to kind of firm up the schedule, okay?

10 MR. REBROOK: Your Honor, this is Edward ReBrook. I
11 just want to circle back on one thing if I may.

12 THE COURT: All right.

13 MR. ReBROOK: If the order for depositions, whatnot,
14 can specifically include the name Burt Colucci and National
15 Socialist Movement Corporation.

16 THE COURT: All right, it will.

17 Anybody else have anything they want to raise?

18 MR. CANTWELL: The email that I read immediately
19 before jumping on this call said the motion to enjoin me was
20 being addressed today. Is that not the case or has that
21 already been addressed?

22 THE COURT: No, that is something I think I said
23 that I would address on the papers and do a written order on
24 and that I'll try and do that pretty shortly.

25 MR. CANTWELL: So there's nothing for me to say on

1 that or should I say anything to that?

2 THE COURT: Well, I've read what you've -- what
3 you've submitted. Is there something additional that you want
4 to say? We didn't have any argument on it, though.

5 MR. CANTWELL: What I would say is what was just
6 sent to me right before I came on here is, you know, another
7 thing that the plaintiffs have pointed out that I said simply
8 stated that I was in a movie theater with a gun, which is not
9 all at unusual for a resident of New Hampshire with concealed
10 carrier license. And then they added to this something that
11 written by somebody else and I feel like this -- you know, my
12 take on it is that the effort that the plaintiffs are making
13 is to put as much information as they can in front of you and
14 other eyes so as to put me into disfavor that is in no way
15 evidence of an unlawful threat.

16 And I -- I guess that's all I really want to say.
17 Because I haven't threatened anybody. And the incident with
18 law enforcement coming, the police agreed with me and let me
19 go. It was a nonissue, that somebody who doesn't even live
20 anywhere near me decided to call a movie theater to create a
21 problem for me, which is kind of becoming a frequent
22 occurrence.

23 THE COURT: All right.

24 MS. ASHWELL: Your Honor, this is Erin Ashwell. May
25 I very briefly respond?

1 THE COURT: Sure, but it's got to be brief. This
2 call is --

3 MS ASHWELL: Your Honor, this is what I would have
4 to say. The plaintiffs have not come to the Court every time
5 there has been an ugly internet filing. If we did, we would
6 be in front of you every day. And we take the safety of our
7 counsel and the plaintiffs very seriously. This was
8 well-briefed in July, the issue has continued, and it is of
9 utmost importance to us, and we appreciate your attention to
10 it and that you said you would be soon ruling on it.

11 THE COURT: All right.

12 MR. CANTWELL: There's clearly no threat to
13 anybody's safety here. I don't even know who you people are
14 or where you are. I'm minding my own business in New
15 Hampshire and I got everybody else trying to tear my life
16 apart. This is not what's going on, and it's obviously --
17 there's very clearly not a threat here. I haven't threatened
18 anybody.

19 The implication is simply that because my views are
20 so onerous to plaintiffs that every mention I make of somebody
21 is a crime, and it obviously is not the case. There's no
22 evidence of that, which is why they are trying so hard to
23 insert other things into it. If they had a threat from me,
24 they wouldn't be bringing a blog post from Mike Peinovich.

25 THE COURT: Look, I think that -- I mean, I

1 understand the issue. It has been laid out, and I'm going to
2 address it in a written order.

3 Is there anything else about discovery or the
4 schedule that we need to address right now?

5 MR. HOPPER: Your Honor, this is Dillon Hopper. I
6 just wanted to let you know that I sent an email to the
7 contact I had at IDS, discovery vendor, and I'm just waiting
8 on a reply to see what I need to do to access that information
9 if it has any -- review on myself. And I'll pass that on to
10 Mr. Heimbach and Mr. Kline and everyone else that I can that
11 this is what you need to do.

12 THE COURT: All right. Anything else?

13 All right. Thank you-all for calling in. I
14 apologize for this feedback that we've all been dealing with
15 for some time, and I will get an order out sometime early next
16 week.

17 MR. HEIMBACH: Your Honor, I apologize. Matt
18 Heimbach. One final thing. Mr. Woodard is local counsel for
19 the majority of plaintiffs -- or defendants, and I believe it
20 could be argued that my relationship with the Traditionalist
21 Worker Party is directly related.

22 Would there be any way that the Court would be
23 willing to -- you know, if Mr. Woodard has not been allowed to
24 drop asthmador (phonetic) as a client to have that as local
25 representation?

1 THE COURT: That's something you can talk to
2 Mr. Woodard about. If he enters an appearance on your behalf,
3 then that's fine, but I'm not even sure what you're asking.
4 But you need to talk -- talk to him if you want him to
5 represent you, okay?

6 MR. HEIMBACH: Okay.

7 THE COURT: All right. Thank you-all. Good-bye.
8 (The proceedings concluded 5:08 p.m.)

9 **CERTIFICATE**

10 I, Mary J. Butenschoen, certify that the foregoing
11 is a correct transcript from the record of proceedings in the
12 above-entitled matter.

13 /S/ Mary J. Butenschoen, RPR, CRR

10/23/2019

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